

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TONY LAMAR CARD,

Plaintiff,

v.

THERESA L. FRICKE,

Defendant.

CASE NO. 3:24-CV-5902-DGE

REPORT AND RECOMMENDATION

Noting Date: November 21, 2024

The District Court has referred Plaintiff Tony Lamar Card's pending Application to Proceed *In Forma Pauperis* ("IFP") and proposed complaint to United States Magistrate Judge David W. Christel pursuant to Amended General Order 11-22. On October 25, 2024, Plaintiff filed a proposed civil complaint and an application to proceed *in forma pauperis* ("IFP"), that is, without paying the filing fee for a civil case. *See* Dkts. 1; 1-1.

In determining whether IFP should be granted in this case, the Court has reviewed the proposed complaint and finds Plaintiff has failed to state a claim upon which relief can be granted. The Court also finds leave to amend is not warranted. Therefore, the Court recommends this case be dismissed with prejudice and the Application to Proceed IFP (Dkt. 1) be denied.

1 **Review of the Proposed Complaint.** The Court has carefully reviewed the proposed
2 complaint in this matter. Because Plaintiff filed this complaint *pro se*, the Court has construed
3 the pleadings liberally and has afforded Plaintiff the benefit of any doubt. *See Karim-Panahi v.*
4 *Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir.1988).

5 In his proposed complaint, Plaintiff names Judge Theresa L. Fricke as the sole defendant.
6 Dkt. 1-1. While unclear, Plaintiff appears to allege Judge Fricke entered an order in a separate
7 case that did not contain a legally binding signature. *Id.*

8 **Sua Sponte Dismissal.** The district court may permit indigent litigants to proceed IFP
9 upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the Court
10 must subject each civil action commenced pursuant to 28 U.S.C. § 1915(a) to mandatory
11 screening and order the *sua sponte* dismissal of any case that is “frivolous or malicious,” “fails to
12 state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who
13 is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d
14 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to
15 prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28
16 U.S.C. § 1915(e) “not only permits but requires” the court to *sua sponte* dismiss an IFP
17 complaint that fails to state a claim). An IFP complaint is frivolous if “it ha[s] no arguable
18 substance in law or fact.” *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir.
19 1987) (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *see also Franklin v. Murphy*,
20 745 F.2d 1221, 1228 (9th Cir. 1984).

21 Furthermore, a federal court may dismiss a case *sua sponte* pursuant to Fed. R. Civ. P. 12
22 (b)(6) when it is clear that the plaintiff has not stated a claim upon which relief may be granted.
23 *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) (“A trial court may dismiss a
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1 claim sua sponte under Fed. R. Civ. P. 12 (b)(6). Such a dismissal may be made without notice
2 where the claimant cannot possibly win relief.”); *see also* *Mallard v. United States Dist. Court*,
3 490 U.S. 296, 307-08 (1989) (noting there is little doubt a federal court would have the power to
4 dismiss a frivolous complaint *sua sponte*, even in absence of an express statutory provision).

5 Judge Fricke, the sole defendant named in this case, has judicial immunity. “Anglo–
6 American common law has long recognized judicial immunity, a sweeping form of immunity for
7 acts performed by judges that relate to the judicial process.” *In re Castillo*, 297 F.3d 940, 947
8 (9th Cir. 2002)(internal quotations omitted). “Absolute immunity fails to attach to judicial
9 officers only when they act clearly and completely outside the scope of their jurisdiction.”
10 *Demoran v. Witt*, 781 F.2d 155, 158 (9th Cir. 1985)(internal citations omitted).

11 Plaintiff appears to allege Judge Fricke entered an order in a separate case and that order
12 lacked a legally binding signature. Dkt. 1-1. As the actions giving rise to his complaint are
13 related to the judicial process, Judge Fricke has absolute judicial immunity from this suit. *See*
14 *Olson v. Idaho State Board of Medicine*, 363 F.3d 916 (9th Cir. 2004) (noting that judges are
15 entitled to absolute immunity for actions taken within their jurisdiction). Moreover, Plaintiff’s
16 statements have not clearly shown how his rights were violated and Plaintiff fails to allege any
17 facts that support his conclusion that Judge Fricke’s signature was not legally binding and
18 resulted in a violation of his rights. *See* Dkt. 1-1. Regardless, “[a]llegations of malice or bad faith
19 in the execution of the officer’s duties are insufficient to sustain the complaint when the officer
20 possesses absolute judicial immunity.” *Demoran*, 781 F.2d at 158. This case has no arguable
21 basis in law or fact. Therefore, the proposed complaint should be dismissed as frivolous and for
22 failure to state a claim.

1 **Leave to Amend.** Unless it is absolutely clear that no amendment can cure the defect, a
 2 *pro se* litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend
 3 prior to dismissal of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).

4 In this case, any attempt by Plaintiff to amend the proposed complaint would be futile. As
 5 such, the Court finds Plaintiff should not be afforded leave to amend his proposed complaint.

6 **Decision on Application to Proceed IFP.** A district court may deny leave to proceed
 7 IFP at the outset if it appears from the face of the proposed complaint that the action is frivolous
 8 or without merit. *Minetti v. Port of Seattle*, 152 F.3d 1113 (9th Cir. 1998); *Tripati v. First Nat'l*
 9 *Bank & Trust*, 821 F. 2d 1368, 1370 (9th Cir. 1987). The proposed complaint is frivolous and
 10 entirely without merit. Based upon the above analysis of the deficiencies in the proposed
 11 complaint, the Court recommends denying Plaintiff's Application to Proceed IFP (Dkt. 1).

12 **IFP on Appeal.** In the event that Plaintiff appeals any order entered in this case and/or
 13 appeals dismissal of this case, IFP status should be denied by this Court, without prejudice to
 14 Plaintiff to file with the Ninth Circuit U.S. Court of Appeals an application to proceed IFP.

15 **Conclusion.** For the above stated reasons, the undersigned recommends Plaintiff's
 16 Application to Proceed IFP (Dkt. 1) be denied, this case be dismissed with prejudice as frivolous
 17 and for failure to state a claim, and any IFP status on appeal be denied without prejudice to
 18 Plaintiff to file with the Ninth Circuit U.S. Court of Appeals an application to proceed IFP.

19 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
 20 served upon all parties to this suit not later than **fourteen (14) days** from the date on which this
 21 Report and Recommendation is signed. Failure to file objections within the specified time may
 22 affect your right to appeal. Objections should be noted for consideration on the District Judge's
 23 motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may
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1 be filed by **the day before the noting date**. If no timely objections are filed, the matter will be
2 ready for consideration by the District Judge on **November 21, 2024**.

3 Dated this 31st day of October, 2024.

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6 David W. Christel
7 United States Magistrate Judge
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